payment of a debt may perhaps be executed throughout the Federation because its nature permits this to be done according to its tenor. An order for winding up, however, has many consequences. Some of these bear on the functions and powers of the registrar of companies and the official receiver which, so far as this Ordinance is concerned, are conferred and imposed only on those officials in Singapore. Consequently, such provisions as section 217 relating to dissolution become unworkable, if it is attempted to treat an order made under section 295 as having full effect throughout Malaysia in regard to winding up this company.

Enough has been said to show that an order for winding up made under section 295 against the respondent company probably could not by its nature have full force and effect throughout Malaysia. Section 73(1) of the Malaysia Act (which was also the Act by which clause (3) of Article 121 of the Constitution was enacted) provides that existing laws are to be construed as if the Malaysia Act had not been passed. An order for winding up under section 295 would, before Malaysia Day, have normally been confined in its effect to assets within the jurisdiction of the Supreme Court of Singapore and it seems the more reasonable view, therefore, to conclude that this is still the position.

This aspect, however, appears to raise purely academic questions. For these problems have only to be raised, as they have been in this case, prior to the making of a winding up order, to indicate that, even in a case where it was shown that substantial assets existed in Singapore, the court would not make an order under section 295 or any other order, in these circumstances, without ensuring, either as a matter of law or by the form of the order, that its effect would be confined to the same extent as it was before Malaysia Day, or, where, as in this case, no reason has been suggested why proceedings for winding up might not be taken under the Malayan enactment, without considering whether a restricted form of order might suffice until such proceedings were taken. A suitable restriction in a winding up order is set out in paragraph 68 at page 94 of Volume II of *Palmer's* Company Precedents (17th Edition). *In re Commercial Bank of South Australia* [4] and *in re Matheson Brothers Ltd.* [5] illustrate the course the court will be inclined to take to ensure that proceedings taken against an unregistered company incorporated elsewhere, which has substantial assets within the jurisdiction of the court, will not conflict with winding up proceedings being taken in the country of incorporation under legislation which the court is satisfied will protect local creditors. The case for avoiding any similar conflict in the present circumstances is stronger when all that is necessary is that the petitioning creditor commence proceedings in the same country in the appropriate court under the legislation under which the company was incorporated and no reason is advanced why that action is not being taken. That case is still further strengthened by the provisions of Part XIII of the Ordinance. For, even if there were substantial assets in Singapore, separate proceedings under section 295 would no longer be necessary, if a winding up order was made in Malaya under the Malayan enactment.

Consequently, I consider it inappropriate in the present case to decide what the effect of an order for winding up made under section 295 (the terms of which remain unknown) would be in the rest of Malaysia. The absence of substantial assets in Singapore and consideration of the problems to which such an order might give rise in this case since the establishment of Malaysia, coupled with the complete absence of any suggestion that the appropriate proceedings cannot be taken under the Malayan enactment, are matters which, in my judgment, justify the court in exercising its discretion against the making of a winding up order in this case.

From what I have said, it follows that there is no need for me to consider that part of this appeal which arises from the refusal of the judge to make an order amending the petition.

For the foregoing reasons I would dismiss this appeal with costs and express the hope that it will not be long before there is uniform companies legislation throughout Malaysia.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Braddell Bros.*

DAMU JADHAO v. PARAS NATH SINGH

[F.C. (Barakbah C.J. (Malaya), Wee Chong Jin C.J. (Singapore) and Wylie C.J. (Borneo)) May 3, 1965]

[Singapore — Federal Court Civil Appeal No. 98 of 1964]

Practice and procedure — Appeal — Appeal on question of fact — Finding of trial judge based on oral evidence before it — Principle applicable.

Evidence — Unstamped document — Whether document should be impounded — Admissibility of — Stamp Ordinance (Cap. 170).

This was an appeal against the finding of the trial judge who had dismissed the claim of the appellant for the sum of $2,500 for money lent by him to the defendant under an agreement in writing ([1965] 2 M.L.J. 38). The two main grounds of appeal were (a) that the trial judge should have impounded the document and that it was a document which could be stamped after payment of a penalty and thereafter be receivable in evidence to support the appellant's claim and (b) that the trial judge's finding of facts was against the weight of evidence.

Held: (1) even assuming the appellant's first contention is right the same issue was before the trial court

namely whether the sum claimed was in fact lent by the appellant or that no money was lent by the appellant to the respondent;

(2) as the case was completely dependent on the trial judge's estimate of the credibility of the witnesses and as it was not shown that the trial judge's view of the credibility of the witnesses before him was plainly wrong, the appeal must be dismissed.

Case referred to:—

(1) *Tay Kheng Hong* v. *Heap Moh Steamship Co. Ltd.* [1964] M.L.J. 92.

FEDERAL COURT.

Harbans Singh for the appellant.

K. K. Bezboruah for the respondent.

Wee Chong Jin C.J. (Singapore): This appeal arises from an action which was dismissed in the High Court.

In his specially indorsed writ, the appellant claimed against the respondent a sum of $2,500 for money lent by him to the respondent payable under an agreement in writing signed by the respondent on the 14th June 1962. The defence to that claim was a denial of the loan.

The respondent in his defence admitted signing the written agreement referred to in the statement of claim but averred that the document was signed by him as the result of improper and illegal pressure and threats used by the appellant and his companions and was therefore without any consideration whatsoever and was a null and void agreement. It was also a defence to the claim that the document was a promissory note and not having been duly stamped in accordance with the provisions of the Stamp Ordinance, was not admissible in evidence.

At the trial before Mr. Justice Ambrose, the question as to the admissibility of this document, by reason of it not having been duly stamped, was argued and in the result the learned trial judge ruled that the document was inadmissible in evidence and could not be acted upon by the court, but ruled that evidence other than the document could be given in proof of the terms of the alleged contract of loan. As a result of the ruling, the statement of claim was amended to a claim for $2,500 for money lent by the appellant to the respondent, and the defence was amended leaving only the defence denying the receipt of the sum claimed.

The trial proceeded and on the oral testimony before the trial judge, he rejected the evidence of the appellant and his witnesses, accepted the respondent's evidence that he did not borrow the sum claimed and accordingly gave judgment for the respondent.

There are two main grounds of appeal which have been argued before us. First, it is said that the trial judge should have, under the provisions of the Stamp Ordinance, through the Registrar or Deputy Registrar, impounded this document, and that the document was one which could properly be stamped, even after execution on payment of a penalty and thereafter be receivable in evidence in support of the appellant's claim. I take the view in so far as this appeal is concerned that even assuming that the appellant's contention is right on this ground of appeal, the same issue was before the trial court — namely whether the sum claimed was in fact lent by the appellant in the circumstances as set out in his evidence and that of his witnesses, or that no sum of money was ever lent by the appellant to the respondent.

The other main ground of appeal is the usual ground, apart from ground 3 which was not seriously pressed before us by appellant's counsel, when an appellant comes before this court to persuade this court to come to a conclusion that a trial judge's finding of facts was against the weight of the evidence in the court below. The story so far as the appellant's claim is concerned was that on the 14th June 1962 at some time in the afternoon, the respondent came to his house, pleaded with him for an immediate loan of $2,500 which he needed to pay in order to avoid seizure of his cattle. This request after persisting begging by the respondent, according to the appellant, he acceded to and thereupon in the presence of his wife and a companion of the respondent, this money was lent to the respondent who agreed to put his signature to a document to be prepared as evidence of this loan. I do not propose to go through the evidence in detail except that later in the afternoon according to the appellant, at the house of one of his witnesses in this action, the document was drawn up by a person known as Subedhar Singh in terms containing an admission by the respondent that he had taken the sum of $2,500 and promising to pay the sum and this document was signed by the respondent and by four persons as witnesses, including Subedhar Singh, the person who had made out the document.

The respondent at the trial denied ever having taken the loan and related the circumstances under which he had come to put his signature to the document in question. The learned trial judge at the conclusion of the trial dismissed the appellant's claim and in his grounds of judgment, after setting out the evidence given at the trial, gave his reasons as to why he rejected the appellant's evidence and that of his witnesses and accepted the respondent's testimony as to the circumstances under which the document came into existence.

The principles under which an appellate court acts when an appellant seeks to displace the conclusion arrived at by a trial judge on questions of fact have been very recently restated by the Privy Council in the case of *Tay Kheng Hong* v. *Heap Moh Steamship Co. Ltd.*[1] and I

need only refer to a passage of the judgment of Lord Guest when dealing with the matter, where he states:

"Before the Court of Appeal in Singapore was entitled to reject the trial judge's estimate of the credibility of the appellant and Goh Leh they would have to be satisfied that the trial judge's view was plainly wrong and that any advantage which he enjoyed by having seen and heard the witnesses was not sufficient to explain his conclusion."

This case seems to me to be completely dependant on the trial judge's estimate of the credibility of the appellant and his witnesses and nothing that counsel for the appellant has put forward in his arguments before me has persuaded me that the trial judge's view of the credibility of the witnesses before him was in any way plainly wrong.

In those circumstances I hold the view that this appeal ought to be dismissed.

Barakbah C.J. (Malaya) and **Wylie C.J. (Borneo)** concurred.

Appeal dismissed.

Solicitors: *Harbans Singh & Kamil; K. K. Bezboruah.*

CENTRAL ELECTRICITY BOARD v. GOVINDAMAL

[A.C.J. (Ong J.) May 6, 1965]

[K.L. — Civil Appeal No. 4 of 1965]

Practice and Procedure — Attachment of pension — Pension not liable to be attached — Enforcement of maintenance order — Electricity Ordinance, 1949, s. 22.

The respondent obtained an order for maintenance against her husband who was employed by the appellant. Subsequently the court at the instance of the respondent made a further order directing the manager of the appellant board, to deduct the amount of the maintenance from the salary of the husband and pay it to the respondent's solicitors. This was done until 1963 when the husband retired to India on pension and opted to draw his pension there. As the husband ceased to be eligible for salary on retirement the appellant ceased to make any further payment to the respondent's solicitors. Thereupon the respondent obtained an order for a warrant of distress and sale to be issued against the gratuity and pension which may be found in the hands of the manager of the appellant board. The manager filed an objection, which the learned magistrate dismissed after hearing the parties. On appeal,

Held: the pension was not liable to attachment under section 22 of the Electricity Ordinance, 1949 and the order of the magistrate must therefore be set aside.

CIVIL APPEAL.

Ronald Khoo for the appellant.

K. L. Devaser for the respondent.

Ong J.: This is an appeal by the Central Electricity Board, as objector, against the decision of the magistrate at Kuala Lumpur, dismissing an application by the objector, that a warrant of distress and sale, issued by the said magistrate be set aside on the ground that a pension is not liable to be attached sequestered or levied upon for or in respect of any debt.

I am surprised that any attempt at all should have been made to attach a pension, more surprised that it was allowed by way of a warrant of distress and sale, but most of all I am surprised that the objection by the Central Electricity Board should have been dismissed, without any grounds other than that the magistrate "agreed with the arguments of counsel for the applicant."

In Maintenance Application No. 25 of 1949, Kandasamy, the respondent, had been ordered to pay his wife, Govindamal, the sum of $50 per month for the maintenance of their two children. On November 16, 1962, at the instance of Govindamal, the court made an order directing the manager of the Central Electricity Board, Kuala Lumpur, to deduct such sum from the salary of Kandasamy and pay the same to the wife's solicitors, Messrs. Devaser & Co. These payments were made regularly until November 30, 1963. On December 1, 1963 Kandasamy retired on pension, returned to India and opted to draw his pension there. Accordingly arrangements were made between the Attorney-General, Malaya and his counterpart in Madras for remission of Kandasamy's pension through the Chartered Bank Trustees, Malaya Ltd. As Kandasamy ceased to be eligible for salary from December 1, 1963, when he retired on pension, the Central Electricity Board ceased making further payment to Messrs. Devaser & Co.

Thereupon Govindamal made an application to the magistrate for a variation of the order dated November 16, 1962, by substituting the manager of the Chartered Bank Trustees, Malaya Ltd., in place of the manager of the Central Electricity Board, as the person liable to make the monthly payment of $50, with effect from December 1, 1963.

When this application came up, however, Govindamal's solicitors apparently did not ask for an order in terms. Instead they succeeded in obtaining an order for the issue of a "warrant of distress and sale" authorising the bailiff "to make distress by seizure of property, namely, the gratuity and pension belonging to the said Kandasamy which may be found in the hands of the manager of the Central Electricity Board, Kuala Lumpur, and if within 14 days next after such distress the said sum of $200 being the maintenance due for the said four months (December 1963 to March 1964) shall not be paid to sell the property distrained or so much thereof as shall be sufficient to satisfy the said maintenance etc."

Presumably the bailiff carried out his duties